

UNITED STATES DISTRICT COURT

for the  
District of Arizona

Center for Biological Diversity

\_\_\_\_\_  
*Plaintiff(s)*

v.

U.S. Fish and Wildlife Service

\_\_\_\_\_  
*Defendant(s)*

Civil Action No. 4:16-cv-00527-BGM

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* U.S. Fish and Wildlife Service  
1849 C Street, NW  
Washington, DC 20240

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Marc Fink  
Center for Biological Diversity  
209 East 7th St  
Duluth, MN 55805

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT



ISSUED ON 2:13 pm, Aug 09, 2016  
s/ Brian D. Karth, Clerk

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Date: \_\_\_\_\_

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:16-cv-00527-BGM

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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*Applicant Pro Hac Vice*

*Attorneys for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
TUCSON DIVISION**

Center for Biological Diversity,	)	Case No.:
	)	
Plaintiff,	)	<b>COMPLAINT FOR DECLARATORY AND</b>
	)	<b>INJUNCTIVE RELIEF</b>
v.	)	
	)	
U.S. Fish & Wildlife Service,	)	
	)	
Defendant.	)	

## INTRODUCTION

1. Plaintiff Center for Biological Diversity (“the Center”) brings this case against the United States Fish and Wildlife Service (“the Service”) to compel the production of records concerning the import and export of wildlife and plants, including imperiled species, as required by the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552 *et seq.*

2. Each year, the United States imports millions of wildlife and plant specimens from around the globe. These imports include everything from python-skin boots, to parrots and turtles destined for the pet trade, to corals, orchids, and shells used for home decor, to lions killed as hunting trophies, as well as zoo and scientific specimens.

3. Many wildlife and plant imports are sourced from the wild, and some are rare or imperiled species. For example, between 2005 and 2014, the United States reportedly imported over 900,000 specimens of nautilus, an increasingly endangered cephalopod in demand for its beautiful shell, from Indo-Pacific nations. In 2013 alone, traders imported nine “cartons” of Nguru pygmy chameleons, a species deemed “Critically Endangered” by the International Union for the Conservation of Nature (“IUCN”), presumably for the pet trade. An undisclosed number of pangolins, a scaly anteater that is now the most traded mammal on Earth, have been imported from Africa in recent years, despite growing evidence that trade threatens pangolins’ continued existence.

4. Trade is the second largest threat to wildlife species behind habitat destruction. The United States is the second largest retail market for wildlife products in the world.

5. Before most foreign wildlife specimens can be imported into the United States, the specimens must be cleared by the U.S. Fish and Service, regardless of whether the import is intended for commercial trade, scientific research, or hunting trophies. 50

C.F.R. § 14.52. To facilitate clearance, importers must submit an import declaration reporting basic data including, *inter alia*, the date and purpose of the import; species name, country of origin, and quantity of specimens imported; various permit numbers; and names of importers, exporters, and carriers. *Id.* § 14.61; USFWS Form 3-177 (revised 03/10). Additionally, the Service requires permits for the import and export of wildlife and plant species that are protected under various laws, including the Endangered Species Act (“ESA”). *See* 16 U.S.C. §§ 1538(a); 1539(a)(1)(A).

6. The Service inputs data from import declarations and permits into its Law Enforcement Management Information Systems (“LEMIS”) database, also denoting whether the Service cleared or refused the import for entry.

7. For years, the Service routinely released data from its LEMIS database to the public when requested under FOIA, providing quantity, names of foreign and U.S. importers and exporters, and the declared value of the wildlife, among other information.

8. This import data is used by the public, including frequently by conservation groups, to track which species of wildlife the Service allows to enter the United States, from where, imported by whom, and in what quantity, in order to analyze which species may be most affected by trade and potentially to seek international and domestic protections as needed.

9. However, in response to a February 24, 2016 FOIA request (“FOIA Request”) submitted by the Center for Biological Diversity, the Service denied several broad categories of import data, including, *inter alia*: (1) quantity of specimens imported, (2) foreign importer/exporter name, (3) name of carrier, and (4) various permit and document numbers (“FOIA Response”). The Service denied this information under FOIA Exemption 4, which exempts confidential commercial information from disclosure. 5 U.S.C. § 552(b)(4). On April 8, 2016, the Center administratively appealed the denial (“FOIA Appeal”). The Service has not responded to the Center’s FOIA Appeal.

10. This action seeks to compel disclosure of this most basic and critical wildlife and plant import data under FOIA.

### **JURISDICTION AND VENUE**

11. Jurisdiction over this action is conferred by FOIA, 5 U.S.C. § 552(a)(4)(B), the Administrative Procedure Act (“APA”), *id.* § 702, and 28 U.S.C. §§ 1331 (federal question), 2201 (declaratory relief), and 2202 (injunctive relief). This cause of action arises under the laws of the United States, including FOIA and the APA. An actual, justiciable controversy exists between Plaintiff and Defendant.

12. Venue is proper in the District of Arizona pursuant to 5 U.S.C. § 552(a)(4)(B) because Plaintiff has its principal place of business in this judicial district.

13. Assignment of this case to the Tucson Division of this Court is appropriate because Plaintiff has its principal place of business in Pima County. Local Rule 77.1(a), (c).

### **PARTIES**

14. Plaintiff Center for Biological Diversity (“the Center”) is a 501(c)(3) non-profit conservation organization with 48,575 members. The Center’s headquarters are in Tucson, Arizona, and the Center maintains several other offices across the country and in Mexico. Through science, policy, and environmental law, the Center advocates for the protection of threatened, endangered, and rare species and their habitats throughout the United States and abroad. The Center’s International Program specifically focuses on protecting imperiled species outside U.S. boundaries, including from unsustainable trade.

15. The Center and its members are harmed by the Service’s failure to comply with FOIA’s statutory deadlines and the Service’s unlawful failure to disclose data responsive to the Center’s FOIA Request. These violations preclude the Center from understanding the type, quantity, and other important information about wildlife and plant imports that the Service allows into the United States.

16. Import data is critical to the Center and its International Program's operations. Center staff use the data to: track which species are most in trade; determine the volume of trade in particular species in order to evaluate trade as a threat; ascertain the purpose of commercial trade, including whether trade is for medicinal, decorative, fashion, or pet and aquarium purposes by learning the identity of importers and exporters; determine the country of origin; and other purposes. The data and our subsequent analysis informs the Center's organizational strategy, including for determining which species may require additional study and scientific research, advocacy for both domestic and international protections, or increased public awareness. The Center also collects, distills, and distributes the data to keep our members and the broader public informed on critical species protection matters.

17. The Center's organizational interests and activities are and will be adversely affected if the Service continues to violate FOIA's appeal determination deadline and continues to unlawfully withhold records responsive to the Center's FOIA Request. The Center's harms will likely be redressed by an appeal determination from the Service and disclosure of responsive records.

18. Defendant United States Fish and Wildlife Service ("the Service") is a federal governmental agency within the meaning of 5 U.S.C. § 552(f)(1) and is a bureau within the United States Department of the Interior. The Service enforces federal wildlife laws, including clearing wildlife imported into the United States and implementing the ESA, and the Service maintains the LEMIS database. The Service is in possession and control of the records that the Center seeks.

## **STATUTORY BACKGROUND**

### **Freedom of Information Act**

19. The Freedom of Information Act ("FOIA") ensures both an open government and government accountability through transparency. FOIA requires "each agency, upon any request for records . . . shall make the records promptly available to any

person.” 5 U.S.C. § 552(a)(3); *see* Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 26, 2009).

20. FOIA carries a strong presumption in favor of public disclosure.

21. Under FOIA, an agency may withhold a record *only* if the record qualifies for one of nine narrowly construed statutory exemptions. 5 U.S.C. § 552(b)(1)–(9). The agency bears the burden of proving a record qualifies for a FOIA exemption and thus was lawfully withheld. *Id.* § 552(a)(4)(B). If the agency determines that a portion of responsive records is exempt from disclosure, the agency must nonetheless provide “[a]ny reasonably segregable portion” after redacting the exempt information, and the agency must explain why the redacted portions were withheld. *Id.* § 552(b).

22. Under FOIA Exemption 4, an agency may withhold “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” *Id.* § 552(b)(4).

23. Information is not confidential under FOIA Exemption 4 if the information is released or is available to the public in other formats or under other statutes.

24. To ensure prompt disclosure of information, FOIA imposes strict deadlines on federal agencies for responding to both FOIA requests and appeals. Specifically, upon receiving a FOIA request, an agency has 20 working days to respond to the request. *Id.* § 552(a)(6)(A)(i). A requestor may file an administrative appeal of an agency’s failure to disclose requested records in part or in full, and an agency must make a determination on any such appeal within 20 working days. *Id.* § 552(a)(6)(A)(ii). A requester is deemed to have exhausted its administrative remedies and may seek immediate judicial review of the matter if the agency fails to comply with the statutory deadlines. *Id.* § 552(a)(6)(C)(i).

#### **Legal Authorities Governing Wildlife Import**

25. Pursuant to the Service’s authority under several statutes that govern and restrict importation of wildlife into the United States, including the ESA, the Lacey Act,



the Migratory Bird Treaty Act, the African Elephant Conservation Act, and the Wild Bird Conservation Act, the Service's regulations require that a Service officer "must clear all wildlife imported into the United States prior to release from detention by Customs officers," with limited exemptions. 50 C.F.R. § 14.52(a).

26. To facilitate clearance, importers must submit an import declaration reporting basic data. *Id.* § 14.61. The declaration must record, *inter alia*, the date and purpose of the import; species name, country of origin, and quantity of specimens imported; various permit and document numbers; and names of importers, exporters, and carriers. *See* USFWS Form 3-177 (revised 03/10), available at: [https://www.fws.gov/le/pdf/3177\\_1.pdf](https://www.fws.gov/le/pdf/3177_1.pdf).

27. The Service inputs data from import declarations into the LEMIS database, denoting whether the Service cleared or refused the import for entry and whether the item was confiscated or abandoned.

28. Additionally, some ESA-listed wildlife and plant species are subject to import and export prohibitions, restrictions, and permitting requirements. Specifically, the ESA prohibits the importation of all endangered and many threatened-listed species, although the Service may grant import permits for scientific purposes or to enhance the species' survival. 16 U.S.C. §§ 1538(a); 1539(a)(1)(A); 50 C.F.R. § 17.31. The ESA requires the Service to publish notice and seek public comment on each endangered species import permit application. 16 U.S.C. § 1539(a). To facilitate notice and comment, the Service routinely discloses to the public importer/exporter names, quantity, country of origin, and location of wild capture or breeder name and location, copies of permits, and shipping details for live specimens.

29. The United States is also a Party to the Convention on International Trade in Endangered Species of Fauna and Flora ("CITES"). 27 U.S.T. 1087, 993 U.N.T.S. 243 (entered into force July 1, 1975). Additional import and export prohibitions, restrictions, and permitting requirements apply to species listed under the CITES. *Id.*; 16 U.S.C. §

1538(c). CITES requires all Parties to maintain detailed records of trade in CITES specimens, including the names and addresses of exporters and importers, quantity of wildlife traded, and other information. CITES, Art. VIII(6). Parties must submit an annual report, summarizing those records, to the CITES Secretariat. CITES, Art. VIII(7)(a). The Secretariat then publishes data on its publicly accessible CITES Trade Database. *See* <http://trade.cites.org/#>.

30. Additionally, in general, vessels that make entry into the United States must submit a manifest to U.S. Customs and Border Patrol (“CBP”), including a cargo declaration. 19 U.S.C. § 1431(a); 19 C.F.R. § 4.7(a) (requiring submission of Customs Form 1302). Vessel cargo data is compiled daily in CBP’s Automated Manifest System (“AMS”) and “is available to interested members of the public on CD-ROM” for a fee upon request, including vessel name, arrival date, description of goods, manifest quantity, manifest units, piece count, weight, bill of lading number, and the importer’s name and address, unless the importer expressly seeks confidential treatment of its name and address through a regulatory process. 19 C.F.R. § 103.31(e). AMS data released to the public regularly contains names of importers, quantity, and carrier names.

31. Accredited members of the press are also permitted to examine vessel manifests. *Id.* § 103.31(a)(3). All information from the inward manifest may be copied and published, unless the importer seeks confidential treatment of its name and address through a regulatory process. *Id.* § 103(d)(1)(iv). Private sector media services then make the data available to the public for a fee. For example, the Journal of Commerce’s Port Import Export Reporting Service (“PIERS”) collects and analyzes U.S. seaborne imports from vessel manifest documents. *See* <https://www.ihs.com/products/piers.html>. PIERS reports made available to the fee-paying public frequently contain names of importers and shippers, quantity, and value of imports.

### **Administrative Procedure Act**

32. The Administrative Procedure Act (“APA”) provides for judicial review of final agency actions for persons adversely affected or aggrieved by the agency action. 5 U.S.C. § 702.

33. The APA requires a reviewing court to “compel agency action unlawfully withheld or unreasonably delayed” and “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, of otherwise not in accordance with law.” *Id.* § 706.

34. An agency action is arbitrary and capricious if the agency fails to provide an adequate explanation for its action and if the agency diverges from prior policies and standards without providing a reasoned explanation.

### **FACTUAL BACKGROUND**

35. On February 24, 2016, the Center submitted its FOIA Request to U.S. Fish and Wildlife Service. The Center requested “all Law Enforcement Management Information System (‘LEMIS’) data regarding any imports and exports of fish and/or wildlife from January 1, 2005 to the present, including but not limited to all information submitted on Form 3-117 or its predecessor forms:

- (a) Date of import/export,
- (b) Port of clearance,
- (c) Purpose code,
- (d) Customs document number,
- (e) Name of carrier,
- (f) Air waybill of bill of lading number,
- (g) Transportation code,
- (h) Number of cartons of wildlife,
- (i) Names of U.S. importer/exporter and foreign importer/exporter with country code,
- (j) Scientific and common name of species,
- (k) Foreign CITES permit and U.S. permit numbers,
- (l) Description and source codes,
- (m) Country of origin code,
- (n) Quantity/unit, and

- (o) Monetary value.”

36. The Service received the Center’s FOIA Request on February 24, 2016 and assigned the Request the tracking number FWS-2016-00509.

37. On March 4, 2016, the Service responded to the Center’s FOIA Request. The Service’s response letter stated that the Service was “releasing shipment/species information from the following data fields in report form” on accompanying Excel spreadsheets:

- (a) Species code,
- (b) Genus,
- (c) Species,
- (d) Subspecies,
- (e) Specific name,
- (f) Generic name,
- (g) Wildlife description,
- (h) Unit,
- (i) Number of cartons,
- (j) Country of export or import,
- (k) Purpose,
- (l) Source,
- (m) Act,
- (n) Disposition code,
- (o) Disposition date,
- (p) Shipment date,
- (q) Import or export flag,
- (r) Port code,
- (s) Transportation mode, and
- (t) U.S. business.

38. However, the Service informed the Center that it was withholding entire data categories from the spreadsheets. Specifically, the Service withheld the following information pursuant to FOIA Exemption 4, 5 U.S.C. § 552(b)(4):

- (a) Customs document number,
- (b) Name of carrier,
- (c) Air waybill of bill of lading number,

- (d) Foreign CITES permit and U.S. permit numbers,
- (e) Quantity,
- (f) Declared value of wildlife, and
- (g) Foreign importer/exporter.

39. The Service provided the following rationale for withholding the information under FOIA Exemption 4:

The withheld information is commercial or financial information. The company that supplied this information (the submitter) is considered a person, because the term 'person,' under the FOIA, includes a wide range of entities including corporations. Information that was required to be submitted is considered "confidential" if disclosure of it "is likely to cause substantial harm to the competitive position of the person from whom the information was obtained," or harm the Government's ability to obtain it in the future. *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

40. On April 8, 2016, the Center electronically submitted an appeal of the Service's withholdings ("FOIA Appeal"), challenging the Service's application of FOIA Exemption 4. Among other arguments, the Center explained that the requested data is not commercial; the data has already been disclosed in other formats or is publicly available from other sources; disclosure of the data will not cause substantial competitive harm; portions of the withheld data had already been released to the Center and other members of the public in response to similar FOIA requests in the past, and the Service failed to properly justify its withholding.

41. The Center has not received a determination on its FOIA Appeal.

42. On several occasions in the past, the Center submitted FOIA requests for similar information and in response, received LEMIS data including data denied by the Service in response to the Center's February 24, 2016 request.

43. For example, on July 17, 2013, the Center submitted a FOIA request for, *inter alia*, "[a]ny records providing data on the number of wild caught snakes of any species exported from the United States in the last ten years," noting "this request could

be fulfilled with LEMIS data provided by the Office of Law Enforcement.” In response, on July 31, 2013, the Service provided the Center with LEMIS data, including both quantity and foreign importer/exporter names.

44. Similarly, on October 27, 2015, the Center submitted a FOIA request for, *inter alia*, “[a]ny records providing data on the number of live tropical fish, sea horses, and corals of any species imported into the United States in the last ten years,” noting “this request could be fulfilled with Law Enforcement Management Information System (‘LEMIS’) data.” In response, on October 29, 2015, the Service provided the Center with LEMIS data, including quantity of specimens imported.

45. Prior to 2013, the Service routinely released LEMIS quantity, foreign import/exporter names, and declared value of wildlife data to requesters through FOIA.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **Failure to Comply with Appeal Determination Deadline**

46. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

47. The Service failed to “make a determination with respect to” the Center’s April 8, 2016 FOIA Appeal “within twenty days (excepting Saturdays, Sundays, and legal public holidays)” after receiving the appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

48. The Service’s failure to provide a timely determination on the Center’s FOIA Appeal violates FOIA. *Id.*

49. The Court should compel the Service to promptly make a determination on the Center’s FOIA Appeal and disclose all responsive records. *Id.* §§ 706(1); 552(a)(4)(B).

## **SECOND CLAIM FOR RELIEF**

### **Unlawful Withholding of Records Responsive to the Center's FOIA Request**

50. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

51. Plaintiff has a statutory right of access to the public records requested in its FOIA Request, 5 U.S.C. § 552(a)(3), and there is no lawful basis for Defendant's withholding of data responsive to that Request, under FOIA Exemption 4. *Id.* § 552 (b)(4).

52. The Service's failure to disclose data responsive to the Center's FOIA Request violates FOIA. *Id.* § 552(a)(3).

53. The Court should compel production of records improperly withheld. *Id.* § 552(a)(4)(B).

## **THIRD CLAIM FOR RELIEF**

54. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

55. Defendant's March 4, 2016 FOIA Response was a final agency action. Defendant failed to timely determine Plaintiff's FOIA Appeal, and Plaintiff has exhausted all of its administrative remedies. 5 U.S.C. § 552(a)(6)(A)(ii), (a)(2)(C).

56. Defendant's March 4, 2016 FOIA Response failed to provide an adequate rationale for the Service's decision to withhold records and is inconsistent with previous FOIA responses, in which the Service provided quantity, foreign exporter/importer, and other data.

57. The Service's March 4, 2016 FOIA Response violates the APA.

58. The Court should hold unlawful and set aside the Service's March 4, 2016 response to the Center's FOIA request as arbitrary, capricious, an abuse of discretion, and not in accordance with FOIA and compel the Service to disclose all responsive records. *Id.* §§ 706(2); 552(a)(4)(B).

### RELIEF REQUESTED

For the reasons stated above, Plaintiff respectfully requests that the Court grant the following relief:

1. Declare that Defendant's failure to timely make a determination on Plaintiff's FOIA Appeal is unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(ii), and is an agency action that has been unlawfully withheld and unreasonably delayed, *id.* § 706(1).
2. Declare that Defendant's failure to disclose the requested records to Plaintiff is unlawful under FOIA. 5 U.S.C. § 552(a)(3).
3. Declare that Defendant's March 4, 2016 FOIA Response is arbitrary, capricious, an abuse of discretion, or not in accordance with law. 5 U.S.C. § 706(2).
4. Order Defendant to promptly provide Plaintiff with all records that are responsive to its FOIA Request.
5. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412.
6. Grant such other and further relief as the Court may deem just and proper

DATED: August 8, 2016

Respectfully submitted,

/s/ Marc D. Fink

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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**Civil Cover Sheet**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff(s): Center for Biological Diversity**

County of Residence: Pima

County Where Claim For Relief Arose: Pima

**Defendant(s): U.S. Fish & Wildlife Service**

County of Residence: Outside the State of Arizona

Plaintiff's Atty(s):

**Sarah Uhlemann  
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2400 NW 80th Street, #146  
Seattle, Washington 98117  
(206) 327-2344**

Defendant's Atty(s):

**Anchun Jean Su  
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(510) 844-7100 ext. 339**

**Marc D. Fink  
Center for Biological Diversity  
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(218) 464-0539**

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**II. Basis of Jurisdiction: 2. U.S. Government Defendant**

**III. Citizenship of Principal  
Parties (Diversity Cases Only)**

Plaintiff:- N/A

Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **895 Freedom of Information Act**

VI.Cause of Action: **Freedom of Information Act: Failure to timely determine appeal and failure to disclose all responsive records**

VII. Requested in Complaint

Class Action: **No**

Dollar Demand: **N/A**

Jury Demand: **No**

VIII. This case is not related to another case.

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**Signature:** /s/ Marc D. Fink

**Date:** 08/08/16

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

1 Name Marc Fink  
2 Bar # MN Bar # 0343407  
3 Firm Center for Biological Diversity  
4 Address 209 East 7th Street  
5 Duluth, Minnesota 55805  
6 Telephone (218) 464-0539

7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF ARIZONA  
9

10 Center for Biological Diversity,

11 Plaintiff,

12 vs.

13 U.S. Fish and Wildlife Service,

14 Defendant.  
15  
16

Case No.

Corporate Disclosure Statement

17  
18 This Corporate Disclosure Statement is filed on behalf of Center for Biological Diversity  
19 in compliance with the provisions of: *(check one)*



21 Rule 7.1, Federal Rules of Civil Procedure, a nongovernmental corporate party to an  
22 action in a district court must file a statement that identifies any parent corporation  
23 and any publicly held corporation that owns 10% or more of its stock or states that  
24 there is no such corporation.



26 Rule 12.4(a)(1), Federal Rule of Criminal Procedure, any nongovernmental corporate  
27 party to a proceeding in a district court must file a statement that identifies any  
28 parent corporation and any publicly held corporation that owns 10% or more of its  
stock or states that there is no such corporation.



Rule 12.4(a)(2), Federal Rule of Criminal Procedure, if an organizational victim of  
alleged criminal activity is a corporation the government must file a statement  
identifying the victim and the statement must also disclose the information required  
by Rule 12.4(a)(1).

**The filing party hereby declares as follows:**



No such corporation.



Party is a parent, subsidiary or other affiliate of a publicly owned corporation as listed below. *(Attach additional pages if needed.)*



Publicly held corporation, not a party to the case, with a financial interest in the outcome. *List identity of corporation and the nature of financial interest. (Attach additional pages if needed.)*



Other(please explain)

**A supplemental disclosure statement will be filed upon any change in the information provided herein.**

Dated this 8th day of August, 2016.

Marc Fink

Counsel of Record

**Certificate of Service:**

Pursuant to FRCP 5, I hereby certify that I will cause the foregoing document to be served by registered mail, included with the summons, complaint, and other documents required for service by FRCP 4 to the following on August 8, 2016:

Loretta E. Lynch  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Civil Process Clerk  
United States Attorney's Office  
District of Arizona  
Two Renaissance Square 40 N. Central Ave  
Suite 1200  
Phoenix, AZ 85004-4408

U.S. Fish & Wildlife Service  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**CONSENT TO EXERCISE OF JURISDICTION  
BY UNITED STATES MAGISTRATE JUDGE**

**INSTRUCTIONS TO ALL PARTIES  
ACTION REQUIRED WITHIN 14 DAYS**

Pursuant to Local Rule of Civil Procedure 3.7(b), all civil cases will be randomly assigned to a U.S. District Court Judge or to a U.S. Magistrate Judge.

When a case is filed and assigned to a U.S. Magistrate Judge, consent forms, for all parties, are stamped with a case number and given to the individual who is filing the case. On these forms, consent may be given to the jurisdiction of the magistrate judge by signing the consent section of form. If all parties consent, the case will remain with the magistrate judge, pursuant to 28:636(c)(1). These cases are assigned to a magistrate judge for all purposes, including trial and final entry of judgment. Any appeal from a judgment entered by the Magistrate Judge may be taken directly to the United States Court of Appeals for the Ninth Circuit in the same manner as an appeal from any other judgment of a district court.

Consent to proceed before a Magistrate Judge is voluntary, and no adverse consequences of any kind will be felt by any party or attorney who objects to assignment of a case to the Magistrate Judge.

**The party filing the case or removal is responsible for serving all parties with the consent forms.**

If any party chooses the district judge option, the case will be randomly reassigned to a U.S. District Court Judge. To elect to have the case heard before a U.S. District Court Judge, the District Judge Option section of the form must be completed.

**Each party must file the completed consent form and certificate of service with the court no later than 14 days after entry of appearance. This document should be filed in paper form only and must serve a copy by mail or hand delivery upon all parties of record in the case.**

(FOR USE IN CIVIL CASES WITH MAGISTRATE JUDGE AS PRESIDERS)

**RETURN THIS FORM TO THE CLERK'S OFFICE NOT LATER THAN  
FOURTEEN (14) DAYS FROM YOUR APPEARANCE IN THIS CASE.**

**Do NOT electronically file this document!**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Plaintiff,

vs.

Defendant.

Case No. \_\_\_\_\_

**CONSENT TO EXERCISE OF JURISDICTION BY  
UNITED STATES MAGISTRATE JUDGE**

In accordance with provisions of Title 28, U.S.C. Sec. 636(c)(1), the undersigned (party)(counsel of record for \_\_\_\_\_) in the above-captioned civil matter hereby voluntarily consents to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial and entry of a final judgment, with direct review by the Ninth Circuit of Appeals if an appeal is filed.

Date: \_\_\_\_\_

Signature

Print Name

**DISTRICT JUDGE OPTION**

Pursuant to Title 28, U.S.C. Sec. 636(c)(2) the undersigned (party)(counsel of record for \_\_\_\_\_) in the above captioned civil matter acknowledges the availability of a United States Magistrate Judge but elects to have this case randomly assigned to a United States District Judge.

Date: \_\_\_\_\_

Signature

Print Name

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Consent was served (by mail) (by hand delivery) on all parties of record in this case, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Center for Biological Diversity,

Plaintiff(s)/Petitioner(s),

vs.

U.S. Fish & Wildlife Service,

Defendant(s)/Respondent(s)

CASE NO: 4:16-cv-00527-BGM

Application of Attorney For Admission To Practice Pro Hac  
Vice Pursuant to LRCiv 83.1(b)(2)

NOTICE: \$35.00 APPLICATION FEE REQUIRED!

I, Sarah Uhlemann, hereby apply to the Court under LRCiv 83.1(b)(2) for pro hac vice  
admission to appear and practice in this action on behalf of Plaintiff Center for Biological Diversity

City and State of Principal Residence: Seattle, WA

Firm Name: Center for Biological Diversity

Address: 2400 NW 80th Street Suite: #146

City: Seattle State: WA Zip: 98117

Firm/Business Phone: (206) 327-2344

Firm Fax Phone: (NA) E-mail Address: suhlemann@biologicaldiversity.org

I am admitted to practice before the following courts. (attach additional sheets if necessary)

TITLE OF COURT	DATE OF ADMISSION	IN GOOD STANDING?
Supreme Court of Washington	March 5, 2009	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No*
U.S. District Court, Western District of Washington	June 24, 2010	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No*
U.S. Court of Appeals for the Ninth Circuit	May 1, 2008	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No*

\* Explain: See attachment for additional admissions

(An Original Certificate of Good Standing from a FEDERAL BAR in which an applicant has been admitted dated no more than 45 days prior to submission of this application is required.)

I have concurrently, or within 1 year of this application, made *pro hac vice* applications to this Court in the following actions (attach additional sheets if necessary):

Case Number	Title of Action	Date Granted or Denied*
N/A		

\* Explain:

ALL APPLICANTS ARE REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.

If you answer YES to either of the following questions, please explain all circumstances on a separate page.

Are you currently the subject of a disciplinary investigation or proceeding by any Bar or Court?

☐ Yes ☒ No

Have you ever been disbarred from practice in any Court?

☐ Yes ☒ No

I declare under penalty of perjury that the foregoing is true and correct; that I am not a resident of, nor am regularly employed, engaged in business, professional or other activities in the State of Arizona; and that I am not currently suspended, disbarred or subject to disciplinary proceedings in any court. I certify that I have read and will ascribe to the Standards for Professional Conduct, will comply with the Rules of Practice of the United States District Court for the District of Arizona ("Local Rules"), and will subscribe to receive court notices as required by LRCiv 83.1(c).

Date

Fee Receipt #

Signature of Applicant



**Bar Admissions and Dates (cont.):**

Oregon Supreme Court: Sept. 9, 2005

District of Columbia Court of Appeals: Nov. 6, 2006

U.S. District Court, District of Columbia: March 5, 2007

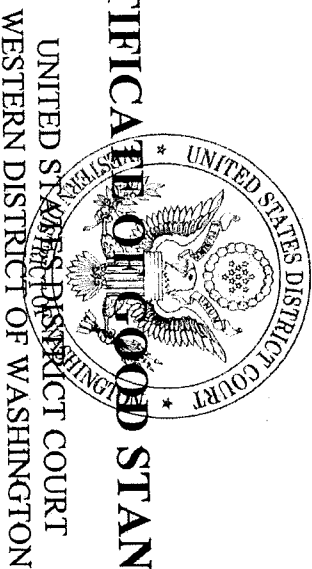
U.S. District Court, District of Oregon: Jan. 28, 2010

U.S. Court of International Trade: Jan. 10, 2013

U.S. Court of Appeals for the District of Columbia: Jan. 17, 2012

\* I am currently in good standing and eligible to practice in each of the above-listed courts.

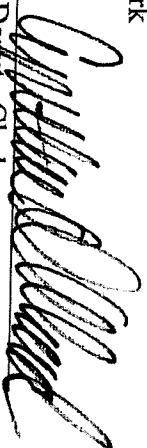
# United States District Court Western District of Washington

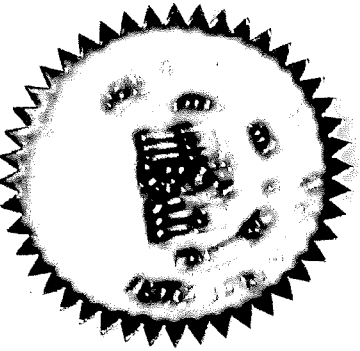


I, William M. McCool, Clerk of the United States District Court for the Western District of Washington, Do Hereby Certify that Sarah Uhlemann was admitted to practice in said Court on June 24, 2010 to the Western District of Washington, and is in good standing as a member of the bar of said Court.

Dated at Seattle, Washington on August 2, 2016.

William M. McCool  
Clerk

By   
Deputy Clerk



### CERTIFICATE OF SERVICE

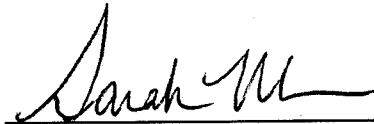
I hereby certify that on August 10, 2016, I served the attached document by mail on the following, who are not registered participants of the CM/ECF System:

Loretta E. Lynch  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Civil Process Clerk  
United States Attorney's Office  
District of Arizona, Phoenix  
Two Renaissance Square 40 N. Central Ave  
Suite 1200  
Phoenix, AZ 85004-4408

U.S. Fish & Wildlife Service  
1849 C Street, NW  
Washington, DC 20240

Civil Process Clerk  
United States Attorney's Office  
District of Arizona, Tucson  
405 W. Congress Street, Suite 4800  
Tucson, AZ 85701-5040



Sarah Uhlemann (WA Bar No. 41164)  
Center for Biological Diversity  
2400 NW 80th Street, #146  
Seattle, WA 98117  
Phone: (206) 327-2344  
Email: [suhlemann@biologicaldiversity.org](mailto:suhlemann@biologicaldiversity.org)  
*Applicant Pro Hac Vice*

*Attorney for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Center for Biological Diversity

**Plaintiff(s)/Petitioner(s),**

vs.

United States Fish and Wildlife Service

**Defendant(s)/Respondent(s)****CASE NO:** 4:16-cv-00527-BGM**Application of Attorney For Admission To Practice Pro Hac  
Vice Pursuant to LRCiv 83.1(b)(2)****NOTICE: \$35.00 APPLICATION FEE REQUIRED!**

I, Marc D. Fink, hereby apply to the Court under LRCiv 83.1(b)(2) for pro hac vice admission to appear and practice in this action on behalf of Plaintiff Center for Biological Diversity

**City and State of Principal Residence:** Duluth, Minnesota**Firm Name:** Center for Biological Diversity**Address:** 209 East 7th Street**Suite:** \_\_\_\_\_**City:** Duluth**State:** MN**Zip:** 55805**Firm/Business Phone:** ( 218 ) 464-0539**Firm Fax Phone:** ( 817 ) 582-3884**E-mail Address:** mfink@biologicaldiversity.org

I am admitted to practice before the following courts. (attach additional sheets if necessary)

<b>TITLE OF COURT</b>	<b>DATE OF ADMISSION</b>	<b>IN GOOD STANDING?</b>
Supreme Court for the State of Minnesota	05/12/2005	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No*
United States District Court for the District of Minnesota	09/15/2006	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No*
United States Supreme Court	02/20/2007	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No*

\* Explain:

(An **Original** Certificate of Good Standing from a **FEDERAL BAR** in which an applicant has been admitted dated no more than 45 days prior to submission of this application is required.)

I have concurrently, or within 1 year of this application, made *pro hac vice* applications to this Court in the following actions (attach additional sheets if necessary):

<b>Case Number</b>	<b>Title of Action</b>	<b>Date Granted or Denied*</b>

\* Explain:

**ALL APPLICANTS ARE REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.**

*If you answer YES to either of the following questions, please explain all circumstances on a separate page.*

Are you currently the subject of a disciplinary investigation or proceeding by any Bar or Court?

☐ Yes ☒ No

Have you ever been disbarred from practice in any Court?

☐ Yes ☒ No

I declare under penalty of perjury that the foregoing is true and correct; that I am not a resident of, nor am regularly employed, engaged in business, professional or other activities in the State of Arizona; and that I am not currently suspended, disbarred or subject to disciplinary proceedings in any court. I certify that I have read and will ascribe to the Standards for Professional Conduct, will comply with the Rules of Practice of the United States District Court for the District of Arizona ("Local Rules"), and will subscribe to receive court notices as required by LRCiv 83.1(e).

8/9/16**Date**Marc D. Fink**Signature of Applicant****Fee Receipt #** \_\_\_\_\_

(Rev. 04/12)

Additional Courts In Which I Am Admitted To Practice:

United States Court of Appeals for the Ninth Circuit	1997
United States Court of Appeals for the Fifth Circuit	7/06/2010
United States District Court for the Western District of Wisconsin	8/25/2011
State of Idaho (inactive)	
State of Oregon (inactive)	

AO 136 (Rev. 10/13) Certificate of Good Standing

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**UNITED STATES DISTRICT COURT**

for the

                     District of Minnesota                     

**CERTIFICATE OF GOOD STANDING**

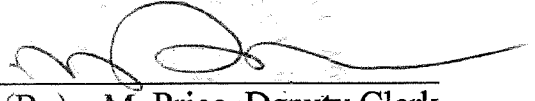
I, Richard D. Sletten, Clerk of this Court, certify that

Marc D. Fink, Bar # 343407, was duly admitted to practice in this  
Court on 9/15/2006, and is in good standing as a member of the Bar of this  
Court.

Dated at Duluth on August 3, 2016.

RICHARD D. SLETTEN

RICHARD D. SLETTEN, CLERK

  
\_\_\_\_\_  
(By) M. Price, Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
TUCSON DIVISION**

Center for Biological Diversity,

Plaintiff,

v.

U.S. Fish & Wildlife Service,

Defendant.

) Case No: 4:16-cv-00527-BGM  
)  
) **[PROPOSED] ORDER RE:**  
) **APPLICATION OF MARC D. FINK**  
) **TO APPEAR PRO HAC VICE**  
)  
)  
)

Upon due consideration and for good cause shown, Plaintiff's Application of attorney Marc D. Fink for admission to practice pro hac vice is hereby granted.